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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200707-0183]

RIN 0648-BJ67

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Abbreviated Framework Amendment 3

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements management measures described in Abbreviated Framework Amendment 3 (Abbreviated Framework 3) to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (South Atlantic Council). This final rule increases the commercial and recreational annual catch limits (ACLs) and Abbreviated Framework 3 increases the recreational annual catch target (ACT) for blueline tilefish in the South Atlantic exclusive economic zone (EEZ). The purpose of this final rule is to ensure that these measures for South Atlantic blueline tilefish are based on the best scientific

information available, to achieve and maintain optimum yield (OY), and to prevent overfishing while minimizing to the extent practicable, adverse social and economic effects.

DATES: This final rule is effective on *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: Electronic copies of Abbreviated Framework 3 may be obtained from *www.regulations.gov* or the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/abbreviated-framework-amendment-3-blueline-tilefish*. Abbreviated Framework 3 includes a Regulatory Flexibility Act (RFA) analysis and regulatory impact review.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727-824-5305, email: *mary.vara@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery in the South Atlantic region is managed under the FMP and includes blueline tilefish, along with other snapper-grouper species. The FMP was prepared by the South Atlantic Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On April 15, 2020, NMFS published a proposed rule for Abbreviated Framework 3 in the **Federal Register** and requested public comment (85 FR 20970, April 15, 2020). Abbreviated Framework 3 and the proposed rule outline the rationale for the actions contained in this final rule. A summary of the management measures described in Abbreviated Framework 3 and implemented by this final rule is provided below. All weights described in this final rule are in round weight.

Management Measure Contained in This Final Rule

This final rule revises the commercial and recreational ACLs for South Atlantic blueline tilefish based on updated information from a Southeast Data, Assessment, and Review (SEDAR) benchmark assessment that was completed for the Atlantic stock of blueline tilefish, using data through 2015 (SEDAR 50).

Prior to this final rule, the blueline tilefish commercial ACL was 87,521 lb (39,699 kg) and the recreational ACL was 87,277 lb (39,588 kg).

Consistent with the results of SEDAR 50 and the acceptable biological catch (ABC) recommendation from the South Atlantic Council's Scientific and Statistical Committee (SSC) that was accepted by the South Atlantic Council, this final rule increases the commercial and

recreational ACLs for blueline tilefish in the South Atlantic EEZ.

The total ACL for South Atlantic blueline tilefish will equal the total South Atlantic ABC of 233,968 lb (106,126 kg). The commercial ACL will be set at 117,148 lb (53,137 kg) and the recreational ACL will be set at 116,820 lb (52,989 kg).

The revised ACLs are consistent with the South Atlantic Council SSC's ABC recommendation, and this final rule does not change the sector allocation percentages in the FMP. The sector ACLs for blueline tilefish are based on an allocation of 50.07 percent of the total ACL to the commercial sector and 49.93 percent of the total ACL to the recreational sector.

Since 2014, the blueline tilefish commercial sector has experienced in-season fishing closures every year between April and August, regardless of the amount of the commercial ACL. If the catch rates of blueline tilefish in the commercial sector continue as expected in the future, the revised commercial ACL is still expected to result in an in-season closure during the commercial season as a result of the ACL being reached. However, the increase to the commercial ACL in this final rule is expected to extend the commercial fishing season further into the fishing

year. Because of recent changes to blueline tilefish management measures and in-season closures, a reliable estimate of future commercial season lengths is not available.

Blueline tilefish is closed to recreational harvest in the South Atlantic each year from January 1 through April 30, and from September 1 through December 31. Each year since 2016, recreational landings of blueline tilefish have exceeded the current recreational ACL. However, a recreational closure during the May through August fishing season as a result of landings being projected to reach the recreational ACL prior to the end of August has not occurred, because in-season recreational landings are typically not available until after the May through August fishing season concludes. When compared to recent trends in estimated recreational landings, the increase in the recreational ACL through this final rule could reduce the likelihood that the ACL would be met during the fixed May through August fishing season.

Management Measure Contained in Abbreviated Framework 3 not Codified Through This Final Rule

In addition to the ACL changes in this final rule, Abbreviated Framework 3 will update the recreational ACT for blueline tilefish in the South Atlantic EEZ. The

recreational ACT is based on an ACT equation in the FMP, unchanged by Abbreviated Framework 3 or this final rule, where the recreational ACT is equal to the recreational ACL multiplied by (1 minus the Percent Standard Error) or the recreational ACL multiplied by 0.5, whichever is greater. Abbreviated Framework 3 increases the recreational ACT from 54,653 lb (24,790 kg) to 70,886 lb (32,153 kg).

Comments and Responses

NMFS received six comments from individuals during the public comment period on the proposed rule for Abbreviated Framework 3. One of the comments was in general support of the actions in the proposed rule. NMFS acknowledges the comment in favor of the actions in the proposed rule and agrees with it. NMFS did not respond to comments that were beyond the scope of the proposed rule in this final rule. The public comment that opposed an action contained in Abbreviated Framework 3 and the proposed rule is summarized below, as well as NMFS' response.

Comment 1: To improve catch levels, the blueline tilefish ACLs should not be increased until the population is more abundant.

Response: NMFS disagrees that the blueline tilefish ACLs in the South Atlantic EEZ should not be increased. Abbreviated Framework 3 and this final rule respond to the

latest stock assessment for Atlantic blueline tilefish (SEDAR 50) completed in October 2017. SEDAR 50 included blueline tilefish data from the South Atlantic Council and the Mid-Atlantic Fishery Management Councils' (Mid-Atlantic Council) jurisdictions. The South Atlantic Council's SSC reviewed the assessment, determined that the assessment represented the best scientific information available, and provided the South Atlantic Council with an overfishing limit and updated ABC recommendation for blueline tilefish in the EEZ south of Cape Hatteras, North Carolina.

Abbreviated Framework 3 and this final rule are increasing the harvest levels for blueline tilefish in the South Atlantic EEZ based on SEDAR 50. These harvest levels are considered by the SSC to be sustainable and will not negatively impact the health of the stock. Additionally, NMFS has determined that blueline tilefish south of Cape Hatteras, North Carolina, is not currently overfished or undergoing overfishing.

Classification

The Regional Administrator for the NMFS Southeast Region has determined that this final rule is consistent with Abbreviated Framework 3, the FMP, the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

The Magnuson-Stevens Act provides the legal basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this rule. Accordingly, the Paperwork Reduction Act does not apply to this rule.

A description of this final rule, why it is being implemented, and the purposes of this rule are contained in the preamble and in the **SUMMARY** section. The objectives of this rule are to ensure that these measures for South Atlantic blueline tilefish are based on the best scientific information available, to achieve and maintain OY, and to prevent overfishing while minimizing adverse social and economic effects to the extent practicable.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this rule, if adopted, would not have a significant economic impact on a substantial number of

small entities. NMFS did not receive any comments from the SBA Office of Advocacy or the public regarding the economic analysis of Abbreviated Framework 3 or the certification contained in the proposed rule. No changes to this final rule were made in response to public comments.

The analysis included in the abbreviated framework action concluded that no charter vessels or headboats (for-hire) would be directly regulated by this rule. However, NMFS subsequently determined that some for-hire fishing businesses would be directly regulated by this rule. The rationale for that determination and the factual basis for the certification were published in the proposed rule and are repeated here for clarity.

This rule increases the total ACL and consequently the commercial and recreational ACLs for South Atlantic blueline tilefish. Thus, this rule applies to entities that harvest South Atlantic blueline tilefish. Recreational anglers fishing for South Atlantic blueline tilefish will be directly affected by the rule. However, anglers are not considered entities under the RFA and thus will not be directly regulated by this rule.

This rule is expected to directly regulate commercial and for-hire businesses (vessels) that harvest or have the ability to harvest South Atlantic blueline tilefish. In

2018, there were 549 vessels with valid or renewable Federal South Atlantic snapper-grouper unlimited permits and 110 vessels with valid or renewable 225-lb (102-kg) trip limited permits. Any vessel with a valid Federal South Atlantic snapper-grouper unlimited permit or 225-lb (102-kg) trip limited permit may commercially harvest blueline tilefish. In 2018, there were 2,176 for-hire vessels that possessed a valid or renewable Federal charter vessel/headboat permit for South Atlantic snapper-grouper. Any for-hire vessel with a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper may harvest South Atlantic blueline tilefish. The number of charter vessels with a valid Federal permit that harvest South Atlantic blueline tilefish cannot be determined with available data. Based on the information above, NMFS determined that this rule may directly regulate 659 commercial fishing businesses and 2,176 for-hire fishing businesses.

From 2014 through 2018, an average of 143 commercial vessels per year landed blueline tilefish in the South Atlantic. Taken together, these vessels averaged 716 trips per year in the South Atlantic on which blueline tilefish were landed, and an additional 4,400 trips in the South Atlantic that did not land any blueline tilefish or were

taken outside the South Atlantic regardless of the species caught. In 2018 dollars, the average annual total revenues were approximately \$0.03 million from blueline tilefish, \$1.89 million from other species co-harvested with blueline tilefish on the same trips, and \$8.95 million from trips in the South Atlantic on which no blueline tilefish were harvested or trips that occurred outside the South Atlantic. Average annual gross revenue from all species landed by vessels harvesting blueline tilefish in the South Atlantic was approximately \$11.15 million. Thus, average annual gross revenue per commercial vessel was about \$78,000 per vessel. For comparison, average annual gross revenue of federally permitted charter vessels and headboats in the South Atlantic is \$123,064 per charter vessel and \$267,067 per headboat in 2018 dollars.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts (revenue) for all businesses primarily engaged in the commercial fishing industry (NAICS code 11411) for RFA compliance purposes only (80 FR 81194, December 29, 2015). In addition to this gross revenue standard, a business primarily involved in commercial fishing is classified as a small business if it is independently owned and operated, and is not dominant in it

field of operations (including its affiliates). From 2014 through 2018, the maximum average annual gross revenue for a single vessel in the commercial snapper-grouper fishing industry was about \$1.6 million in 2018 dollars. Based on this information, all directly regulated commercial fishing businesses are determined, for the purpose of this analysis, to be small entities.

The SBA has established size standards for all other major industry sectors in the U.S., including for-hire fishing businesses (NAICS code 487210). A business primarily involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has annual receipts (revenue) not in excess of \$8 million for all its affiliated operations worldwide. In 2017, the maximum annual gross revenue for a single headboat in the South Atlantic was about \$765,200 in 2018 dollars. On average, annual gross revenue for headboats is more than double the annual gross revenue for charter vessels. Thus, it is assumed the maximum annual gross revenue for charter vessels is less than \$765,200. Based on this information, all directly regulated for-hire fishing businesses are

determined, for the purpose of this analysis, to be small entities.

For South Atlantic blueline tilefish, this rule increases the total ACL from 174,798 lb to 233,968 lb (79,287 kg to 106,126 kg), the commercial ACL from 87,521 lb to 117,148 lb (39,699 kg to 53,137 kg), the recreational ACL from 87,277 lb to 116,820 lb (39,588 kg to 52,989 kg). In addition, Abbreviated Framework 3 increases the recreational ACT from 54,653 lb to 70,886 lb (24,790 kg to 32,153 kg). The recreational ACT does not constrain harvest in the recreational sector and therefore is not relevant with respect to determining effects on small entities.

The increase in the commercial ACL is expected to increase annual gross revenue for commercial snapper-grouper fishing entities harvesting blueline tilefish by a total of \$96,979, or by about \$678 per active vessel, while profits for all commercial snapper-grouper fishing entities harvesting blueline tilefish are expected to increase by \$23,134, or about \$162 per vessel, in 2018 dollars. Because the recreational ACL is shared between private anglers and for-hire vessels, but without an established allocation among those components, it is not possible to determine how much of the increase in the recreational ACL will accrue to the for-hire snapper-grouper vessels that harvest blueline

tilefish. However, the higher recreational ACL would be expected to at least minimally increase the number of for-hire trips harvesting blue-line tilefish, which in turn would be expected to minimally increase the for-hire vessels' profits.

Because this final rule is not expected to have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Annual catch limits, Blue-line tilefish, Fisheries, Fishing, South Atlantic.

Dated: July 7, 2020.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.193, revise the first sentence in paragraphs (z)(1)(i), (2)(i), and (3) to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

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(z) * * * (1) * * * (i) If commercial landings for bluefin tilefish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 117,148 lb (53,137 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. * * *

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(2) * * * (i) If recreational landings for bluefin tilefish, as estimated by the SRD, reach or are projected to reach the recreational ACL of 116,820 lb (52,989 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the recreational

sector for the remainder of the fishing year, unless the RA determines that no closure is necessary based on the best scientific information available. * * *

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(3) The combined commercial and recreational sector ACL (total ACL) is 233,968 lb (106,126 kg), round weight.

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